IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 18730 of 2007(D)

PETITIONER:

D.SURESH, AGED 44 YEARS,
S/O. LATE DAMODARAN, CHERADIYIL, THODUPUZHA.

BY ADV. SRI.THOMAS M.JACOB

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, DEPARTMENT OF MOTOR VEHICLES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. ASSISTANT MOTOR VEHICLES INSPECTOR,
R.T. OFFICE, ATTINGAL.

3. MOTOR VEHICLES INSPECTOR,
R.T. OFFICE, THIRUVALLA.

4. ASSISTANT MOTOR VEHICLES INSPECTOR,
R.T.OFFICE, ERNAKULAM.

5. TAXATION OFFICER,
OFFICE OF JOINT REGIONAL TRANSPORT OFFICER,
SUB REGIONAL TRANSPORT OFFICE, THODUPUZHA.

BY GOVERNMENT PLEADER SRI.S.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 18730 of 2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF MOTOR VEHICLES CHECK REPORT NO.040064 DATED 14.06.2007 FOR SEIZURE OF LORRY BEARING NO.KL-06/C 8913

EXT.P2- TRUE COPY OF MOTOR VEHICLES CHECK REPORT DATED 16.06.2007 FOR SEIZURE OF LORRY BEARING NO.KL-06/C 887

(TRUE COPY)

P.A TO JUDGE

S.SIRI JAGAN, J

W.P.(C).No. 18730/2007

Dated this 26th day of June, 2007

JUDGMENT

The petitioner is a transporting contractor for FACT and FCI. In view of the amendment of the motor Vehicles Act making installation of speed governor in vehicles compulsory, the Supreme Court has fixed a time limit for installing the same. However, the petitioner did not install the speed governor in his vehicles. As a result of the same, the authorities under the Motor Vehicles Act refused to accept motor vehicle tax in respect of his vehicles for the quarter ending 30.6.2007. In view of the non-acceptance of tax, the petitioner could not pay the tax as a result of which some of the petitioner's vehicles were seized by the police. In the above circumstances, the petitioner has approached this Court seeking following reliefs:-

(i). Issue a writ of mandamus or such other writ direction or order, commanding the fifth respondent to accept the tax amounts of the vehicles of the petitioner forthwith.

(ii). Direct the fifth respondent not to insist upon

speed governors to be fixed in vehicle as a precondition for collection of tax.

(iii). Direct the second, third and fourth respondents to release lorries bearing No.KL-06/C 8913, KL-06/C 8885 and KL-06/C 8887 respectively to the petitioner forthwith.

(iv). Issue a Writ of Certiorari or such other appropriate Writ direction or order and quash the proceedings initiated against the petitioner for non payment of tax for the quarter ending 30.6.2007 in respect of lorries bearing No.KL-06/C 8913, KL-06/C 8885 and KL-06/C 8887.

2. The petitioner's contention is that he is ready to pay the tax, but the same is not being accepted. Therefore, he cannot be mulcted with penalty for the non-payment of tax. He also submits that the petitioner has already installed speed governors in respect of nine of his vehicles and only eleven are remaining and the petitioner could not fit speed governors in those vehicles only because of non availability of the speed governors in the market. The petitioner would submit that therefore, the vehicles should be released to the petitioner.

3. Originally I had passed interim order in this petition as follows:-

> “There would be an interim order directing the fifth respondent to accept the tax due on the petitioner's vehicles mentioned in the writ petition and to keep it in a separate account for 20 days. If, after 20 days, still the petitioner has not installed speed governors, the fifth respondent can proceed as if the petitioner has not paid the tax and take appropriate action against the vehicles. On payment of tax, the vehicles detained shall be returned to the petitioner, which shall be repossessed after 20 days, if the petitioner does not fit th speed governors in those vehicles. However, this shall not be taken as an extension of time granted to the petitioner for installation of the speed governors and the failure on the part of the petitioner to install the speed governors within the time stipulated by the Supreme Court would attract all the other penalties attached to such violation.”

4. Thereafter, the learned Government Pleader made a representation to the effect that in view of the decision of another learned Single Judge in W.P.(C). 8590/2007, the matter itself should be heard finally and accordingly this writ petition comes up for hearing today. The learned Government Pleader submits that the time fixed by the Supreme Court for installing speed governors as per the Act has already expired, and it is under the above circumstances, that it has been decided not to accept tax in respect of vehicles which have not been fitted with speed governors. The learned Government Pleader also strongly disputes the contention of the petitioner that speed governors are not readily available in the market. The learned Government Pleader points out that in W.P.(C).8590/2007, while considering the question as to whether for not installing speed governors temporary permits can be denied in respect of vehicles not fitted with speed governors, the learned Single Judge has held that if the Court interferes with such action, the same would amount to preventing officers of the State from obeying the

directions of the Apex Court. He would also submits that the Government has to file a report before the Supreme Court as to the steps taken by the State to implement the amended provision of the Act and if the vehicles are now directed to be released, the State would be hauled up by the Supreme Court.

5. I have considered the rival contentions in detail. In regard to the judgment of the learned Single Judge in W.P.(C).8590/2007, the learned counsel for the petitioner would strongly contend that the facts of the case are totally different from the facts of this case. According to him, refusal to issue temporary permit for want of fitting of speed governors cannot be equated with refusal to accept tax for want of speed governors and seizure of vehicles for non payment of tax. According to him, it is totally unjust to seize vehicles for non-payment of tax when the authorities are not accepting tax when tendered.

6. Of course, the petitioner's case is a very hard case. But it still remains a fact that the Supreme Court has finally directed the State Governments to implement

the amended provision of the Act requiring compulsory installation of the speed governors in vehicles. In W.P. (C).8590/2007, while refusing to interfere with orders of the Motor Vehicles authorities, refusing to consider the application of temporary permits, a learned Single Judge opined that if the Court interferes with the order, the same would amount to preventing officers of the State from obeying the directions of the apex Court. I feel that in this case also if I direct acceptance of the tax by the Motor Vehicle Authorities, that would also necessarily amount to preventing officers of the State from obeying the directions of the apex Court, since the non-acceptance of tax itself is for non-installation of speed governors which the Supreme Court has directed to implement within a time limit to which time limit is already over. Further, in the decision in **Regional Transport Officer v. Binu (2006 (1) KLT 188),** a Division Bench of this Court has held that the Motor Vehicles Act and Motor Vehicles Taxation Act being complementary laws, it would be open to the State to take recourse to the provisions of one Act for enforcing

the provisions of the other. That decision is squarely applicable to the facts of this case. Admittedly, the petitioner has not installed speed governors in his vehicles within the time stipulated by the Supreme Court. He has to necessarily face the consequences of the same, one of the consequences is non-acceptance of tax. Therefore, I cannot fault the officers of the State from refusing to accept tax for non installation of speed governors.

7. The petitioner would contend that the detention of his vehicles would cause heavy loss to him since he would be prevented from fulfilling his contractual obligations. I am of the opinion that since without installing speed governors the petitioner cannot ply his vehicles, detention of the vehicles does not make any difference in that respect.

8. In the above circumstances, I do not find any merit in this writ petition and accordingly, the same is dismissed. However, if the Supreme Court extends time for installation of speed governors the petitioner would be entitled to the benefit of such extension. The

respondents shall also afford facility to the petitioner to install the speed governors in his vehicles, notwithstanding the detention, if he approaches them with speed governors.

S.SIRI JAGAN
JUDGE

mrcs